IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 22170 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE DN PATEL

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1 Whether Reporters of Local Papers may be allowed to see the judgment?

2 To be referred to the Reporter or not?

3 Whether their Lordships wish to see the fair copy of the judgment?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder?

5 Whether it is to be circulated to the civil judge?

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MATHURBHAI RATILAL GANDHI - Petitioner(s)

Versus

VINAYAK LAXMINARAYAN THACKER & 17 - Respondent(s)

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Appearance :

MR BP MUNSHI for Petitioner(s) : 1,
None for Respondent(s) : 1 - 8,10 – 17.
MR ANAND G BHATT for Respondent(s) : 9,
MR HD DAVE, AGP for Respondent : 18

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CORAM : HONOURABLE MR.JUSTICE DN PATEL

Date : 15/11/2005

ORAL JUDGMENT

1.Rule. Learned AGP Mr. H. D. Dave, waives service of Rule on behalf of Respondent No. 18.

2.The present petition has come to be preferred

against the interim order passed by the Joint Charity Commissioner, Rajkot dated 28th September 2005 under Section 50-A read with Section 69 of the Bombay Public Trusts Act, 1950.

3. Learned counsel for the petitioner mainly submitted that the respondent No. 18 i.e. Joint Charity Commissioner has no power, jurisdiction and authority to pass such order under the Act, 1950. He has also submitted that the period of appointment of the interim trustees has not been fixed. There is also violation of certain clauses of the scheme already framed under Section 50-A of the Act, 1950. The trustees appointed by Joint Charity Commissioner are not eligible and the petitioner has not been heard. The learned counsel appearing for the petitioner has also relied upon the Judgments reported in the case of **Dr. R. P. Kapoor & Ors. Vs. The Charity Commissioner, Maharashtra State reported in AIR 1989 Bombay 274** and in the case of **Shree Dwarka Lohana Mahajan Sada Vrut Fund Vs. Joint Charity Commissioner reported in AIR 2004 Gujarat 147**.

4.I have also heard the learned counsel appearing for respondent No. 9, who has submitted that the petitioner and other 13 trustees are continued since long dehors the provisions of the Scheme. The respondent No. 18 has all power, authority and jurisdiction to pass such an interim order during the pendency of the application bearing No.03/2003 for modification of the Scheme under Section 50-A of the Act, 1950. There are several allegations levelled against the trustees as to the mis-management of the Trust. The term of the appointment has also been over. The new trustees have not been appointed since long. The application for change in the names of the Trustees under Section 22 of the Act has also been dismissed and several appeals are pending as referred in para 1 & 2 of the impugned Order passed by the Joint Charity Commissioner (Annexure C to the memo of the petition) and hence, this is an interim order in which, this Court may not interfere in the said order in exercise of the extraordinary jurisdiction conferred upon this Court.

5.Having heard the learned counsels and looking to

the facts and circumstances of the case and looking to the nature of the interim order passed by the Joint Charity Commissioner dated 28th September 2005 in Misc. Application No. 03 of 2003, I see no reason to entertain the present petition, especially for the following facts and reasons:

I) The impugned order(Annexure C to the memo of the petition) is an interim order passed by the Joint Charity Commissioner, Rajkot dated 28th September 2005 in exercise of powers under Section 50-A to be read with Section 69 of the Act, i.e., during the pendency of the application bearing No. 03 of 2003 for modification of the Scheme under Section 50-A of the Act.

II) Looking to the facts of the case, it appears that the Scheme was framed in the year 1990. The trustees appointed were to retire as per clause 10 of the Scheme, nonetheless trustees have been continued since long. It appears from the facts of the case that the term

has been over and they have continued as trustees of the Trust.

III) Several allegations are levelled against the trustees and as to the management of the Trust as referred in para 2 of the impugned Order, the accounts have not been audited and have not been presented.

IV) Insofar as the point of hearing is concerned, details have been mentioned in para 3 of the impugned order, public notice has been given, proper hearing has been given while passing the impugned order and therefore the argument canvassed by the learned counsel appearing for the petitioner for the breach of principles of natural justice is not accepted by this Court.

V) Enough care has been taken by the Joint Charity Commissioner while passing the impugned order by imposing certain conditions of the management of the Scheme by the trustees

appointed like the maximum discretion given is of Rs. 10,000/- for the expenses, cash payment can be made upto Rs. 500/-, permissions ought to be taken from the Charity Commissioner's Office, as to the operation of the bank account, submission of the account to the Charity Commissioner's Office and several other conditions referred as to the management of the Trust as an interim measure till the application bearing No. 03 of 2003 is finally decided.

VI) It appears from the facts of the case that the Managing Trustees have resigned and from the nature of the impugned order, it appears that it is a sort of consent order. Looking to the facts of the case, the order passed by the Joint Charity Commissioner is absolutely true, correct, legal and in consonance with the Act of 1950. There are all powers vested in the Joint Charity Commissioner to pass the interim order. When Joint Charity Commissioner has power to pass the final order under Section 50-A to be read with Section 69 of

the Act, 1950, he has also power to pass interim order. All care has been taken by the Joint Charity Commissioner while passing the impugned order for the better management of the Trust and for the welfare of the beneficiaries.

6. As a cumulative effect of the aforesaid facts and reasons, I see no reasons to interfere with the order passed by the Joint Charity Commissioner dated 28th September 2005 (Annexure C to the memo of the petition). Nonetheless, I hereby direct the Joint Charity Commissioner to hear and decide finally the Scheme Modification Application No. 03 of 2003, as expeditiously as possible, preferably within a period of 8 weeks from the date of the receipt of the Writ of this Court.

7. In view of these facts, petition is disposed of. Rule is discharged with no order as to costs. Direct service is permitted.

(D. N. PATEL, J.)

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